
Division Testimony on HB 90

Short Title: Montana Mortgage Bill

Good Morning. I am Kelly O'Sullivan, legal counsel with the Division of Banking and Financial Institutions, Department of Administration (Division). The Division is charged with chartering and regulating state banks and credit unions, as well as mortgage brokers, mortgage lenders, and mortgage loan originator, and consumer, title, and payday lenders.

HB 90 would give the Division the authority to license, examine, and regulate mortgage servicers. Mortgage servicers are entities that accept mortgage payments from borrowers and apply the payments to the proper account. A portion of the payments are placed in an escrow account for payment of taxes and insurance. The rest is sent to note holders. There are two main types of servicers, bank servicers and nonbank servicers. Bank servicers are chartered, licensed, and regulated by their chartering agency and a federal agency regulator. A bank can be chartered nationally or by a state. Non-bank servicers are not currently regulated in Montana. HB 90 provides that the Division would regulate servicers in Montana.

Mortgage servicers need to be regulated. Two recent issues involving servicers have been: (1) "robo-signing" of foreclosure affidavits – cases in which people signed affidavits attesting that the statements therein were true and correct without ever having looked at a file to verify that information; and (2) issues in which payments were made by borrowers to servicers but the payments were not properly applied by the servicer, most notably Taylor Bean Whitaker which I will discuss later.

In Montana, the Division already licenses, examines and regulates the other nonbank entities in the mortgage world. The Division began licensing and examining nonbank mortgage loan originators and brokers in 2004, and non bank mortgage lenders in 2008.

In 2009, Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). The SAFE Act required all nonbank mortgage loan

originators to be licensed through the Nationwide Mortgage Licensing System. One of the goals of the SAFE Act was to promote uniformity between all states in the licensing and regulation of mortgage loan originators. The SAFE Act also requires all mortgage loan originators employed by banks to be registered through the nationwide mortgage licensing system.

The nationwide mortgage licensing system is a nationwide database of all licensed individuals and entities in the mortgage origination process. It contains the names and license statuses of all mortgage loan originators, mortgage brokers, and mortgage lenders in the nation. Over the course of the last year, Montana and all the other states, have implemented the licensure of all their supervised entities through the nationwide mortgage licensing system. The Division has licensed 1200 residential mortgage brokers, mortgage lenders and mortgage loan originators over the course of the last year through the nationwide mortgage licensing system.

As of Jan. 1, 2011, all 50 states are on the nationwide mortgage licensing system and are using it to license mortgage loan originators and mortgage entities. Starting on Jan. 31, 2011, all banks will begin registering their employees who are involved in the mortgage loan origination process. That registration process is expected to be completed by July 29, 2011.

The nationwide mortgage licensing system has a public and regulator only section. The public can go to the nationwide mortgage licensing system website, and look up the mortgage professional they are dealing with to ensure that they are licensed in their state and in good standing. If the entity or individual has any disciplinary history it will be listed. Lenders including Freddie Mac, Fannie Mae, and HUD will use the nationwide mortgage licensing system to ensure that the mortgage loan originators and brokers they are working with are licensed.

Regulators will use the nationwide mortgage licensing system to share nonpublic information on licensees.

In order to be licensed in Montana through the nationwide mortgage licensing system, individuals must meet complete pre-licensing education and testing and meet character and fitness standards as well as financial responsibility standards. Individuals who have ever had a license revoked are not eligible for licensure. Likewise, individuals who have had a felony conviction in the last seven years or ever if the felony involves an act of fraud, dishonesty, a breach of trust, or money laundering, are not eligible for licensure or to act as a control person of an entity. In addition, individuals must complete CE for each year they are licensed.

Entities must carry surety bonds and file call reports with the Division.

In addition to licensing, the Division has a staff of certified financial examiners who are trained in the federal and state laws applicable to the mortgage loan process. The examiners go to the licensee's business premise and review the business case files for compliance with state and federal laws. If there are violations of state and federal laws, the Division takes enforcement action against the company and seeks restitution for borrowers.

In the last biennium, the Division returned \$189,000 to Montana residents as a result of the examination process and lawsuits filed against licensees.

The Division cooperates with other states banking departments in joint examinations of out of state lenders and brokers. And the Division uses the examination protocols developed by the multi-state working groups of state banking departments.

While the Division licenses the rest of the nonbank entities in the mortgage loan process it does not currently license servicers. At the present time, nonbank servicers are unlicensed in Montana. This has become a problem recently.

The case of Taylor Bean Whitaker (Taylor Bean) brought this problem to a head. Prior to August 2009, Taylor Bean was the largest non-bank lender in the United States. A significant part of Taylor Bean's operation was its mortgage servicing operation. As of August 3, 2009, Taylor Bean serviced over 500,000 mortgages having a combined unpaid balance in excess of \$80 billion. These mortgages were owned by various investors.

On August 4, 2009, Taylor Bean was notified by HUD, Ginnie Mae, and Freddie Mac that it was being terminated and/or suspended as an approved seller and servicer for each of those respective federal agencies. This action was taken because the principals of Taylor Bean allegedly submitted false information to HUD.

Taylor Bean ceased operations on August 5, 2009 and subsequently filed bankruptcy. Its principal bank, Colonial National Bank was closed by regulators on August 14, 2009. The other bank with whom Taylor Bean dealt, Platinum Community Bank, was closed by regulators on September 4, 2009.

As a result of the Taylor Bean bankruptcy and two subsequent bank failures, the Division became aware of two Montana borrowers who experienced problems:

1. One couple paid money to Taylor Bean in their monthly mortgage payments for taxes and insurance. Taylor Bean went bankrupt before the taxes and insurance were paid. The Montana couple had to self-pay their taxes for two tax cycles (the same taxes for which they paid escrow) and were told that the home was likely uninsured due to the failure of Taylor Bean to pay the insurance. This, of course, puts them at risk of loss if some disaster should occur to the house. It is currently unclear if there will be sufficient money in the bankruptcy estate to repay these borrowers for the money they paid into escrow to cover taxes and insurance.
2. The same couple was in the process of refinancing when Taylor Bean and the banks closed. Taylor Bean had a unique manner of refinancing. They called it net funding loans. The process was this: Taylor Bean would use the proceeds of the second loan to pay off the first loan. When Taylor Bean declared bankruptcy, there were 788 properties that had two loans outstanding, both the first loan that the borrower sought to refinance and the second or refinanced loan. Two lenders had in effect lent full value on the same home. One Montana couple has a net funded loan, meaning that they have two mortgages on their property. Even if they pay faithfully all amounts due to one lender, the other one will be delinquent, harming the couple's credit rating and putting them at risk of foreclosure.
3. One couple faithfully paid their mortgage payments to Taylor Bean (servicer) and was being foreclosed on by Bank of America. The money was apparently not properly conveyed to Bank of America by Taylor Bean (this may be because the accounts were frozen in bankruptcy then involved in the FDIC insurance process following the two bank closures).

These problems are currently being worked out in bankruptcy, which is still ongoing. Unfortunately for some Montana borrowers, it may be too late by the time the bankruptcy court comes to a resolution.

The Division needs the ability to license, examine, and supervise nonbank mortgage servicers. The Division already has the trained licensing staff, the access to the Nationwide Mortgage Licensing System, and certified financial examiners needed to supervise the other entities involved in the mortgage lending process, it should be given the responsibility to supervise servicers as well. This bill simply inserts "mortgage servicer" in the licensing, bonding, examination and prohibition sections of existing law.

It also provides a new section of duties of mortgage servicers which includes complying with state and federal law, providing notice to a borrower on taking action to place insurance on the mortgaged property, not to place insurance if the servicer knows that insurance is already in effect, placing insurance in an amount that exceeds the value of the improvements or the last known coverage amount, refunding unearned premiums, and to make all payments from escrow for taxes and insurance in a timely manner and allows the Division rulemaking authority over mortgage servicers duties.

The other purpose of HB 90 is to fix several technical drafting errors that were made in the 2009 session when the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act was amended to comply with the federal Secure and Fair Enforcement of Mortgage Licensing Act of 2008.

The third purpose of HB 90 is to bring the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act into compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act. Those of you who were here last session may recall that Congress passed the SAFE act and gave all states one year to pass legislation that complies with the SAFE Act or federal office of Housing and Urban Development (HUD) HUD will take over the regulation of mortgage loan originators in any state that fails to do so. HUD was given the authority in the SAFE Act to review each state's law for compliance with the SAFE act.

The Division was notified by HUD in January 2010 that several areas of our Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act do not comply with the federal Secure and Fair Enforcement for Mortgage Licensing Act. HB 90 would address those areas to the extent possible at this time.

There is one technical amendment being proposed by the Division it would correct a mistake made in exempting persons from the Mortgage Act instead of transactions.

I ask for your support of HB 90.

Thank you.